to its loss. The court allowed a recovery against the broker. The article contends that since, if the power had been good, the Bank would have been already bound by law to transfer the consols, there could be no consideration. But is this conclusion justified? When the power came before the agent and the Bank, neither of them knew whether it was good or not, and from their point of view it might turn out either way. Would not a warranty be supported therefore by ample consideration, the detriment incurred by the Bank being the risk that the result of the transfer might be contrary to its interests? Contracts on such consideration are sustained. *Callisher* v. *Bischoffsheim*, L. R. 5 Q. B. 449; *Seward* v. *Mitchell*, 1 Cold. (Tenn.) 87. Of course the reply is obvious that the parties never intend to make any such contract. But neither did they so intend in *Collen* v. *Wright*. To say that they did is a fiction, and has been so called. See dissenting opinion of Cockburn, C. J., *Collen* v. *Wright*, *supra*; HUFFCUT, AGENCY, 231. If it is a fiction, there is no reason why a court may not apply it as bravely to the one case as to the other, to *Oliver* v. *The Bank of England* as bravely as to *Collen* v. *Wright*.

Obviously the fiction of warranty confuses the matter. It is desirable to ascertain clearly the real basis on which these cases must rest. Since the case of *Peek* v. *Derry* in the House of Lords the only ground on which they can be put is that of business convenience and necessity. That case decided that one who suffers by acting in reliance on a merely negligent misrepresentation cannot recover. *Peek* v. *Derry*, L. R. 14 App. Cas. 337. *A fortiori* he could not recover on a non-negligent misrepresentation. We therefore have to recognize that in England the *Collen* v. *Wright* cases are an exception to *Peek* v. *Derry*, in that they allow a recovery where an agent makes a misrepresentation as to his authority. The ground of business necessity suggested as a basis for the exception is a very strong one. Business has to be conducted through agents. The agent usually can investigate his authority and find out with considerable certainty whether or not it exists in a particular case, while the person with whom he deals very seldom can. As a consequence it is, as a matter of fact, the custom of business men to take agents largely upon trust. There are peculiar reasons therefore why an agent should be viewed differently from others and held liable for even an innocent and non-negligent misrepresentation as to a fact which it is especially within his province to know, and which others as a practical matter are unable to investigate. It is both just and necessary for the safe conduct of business. These arguments would seem ample to justify an exception with regard to these cases. The exception being granted, it of course includes *Oliver* v. *The Bank of England*. That case appears to be rightly decided.

It is interesting to note that where the agent acquaints the person with whom he deals of the doubt as to his authority he is not held liable. *Lilly* v. *Smales*, [1892] 1 Q. B. 456.

UNRECORDED TRANSFER OF STOCK. — A recent article discusses the respective rights of the creditor who has attached the stock of his debtor upon the books of the corporation and the prior purchaser who has failed to obtain a transfer upon the books. *Certificates of Stock: Relative Rights of an Attachment Creditor and a Prior Unrecorded Transferee*, by L. L. Leonard, 55 Central L. J. 243 (Sept. 26, 1902) The author considers the creditor entitled to preference on strict legal principle, but admits that the practical demands of business will ultimately cause the transferee to be given priority. Mr. Leonard's argument seems somewhat weakened by the fact that his cases are often inaccurately cited; in several instances also they do not turn on the point for which he cites them.

It seems conceded that apart from the usual regulation by statute or by the charter or the by-laws of the corporation the legal title to stock passes to the transferee by the act of sale and the creditor of the transferor can thereafter have no claim upon it. *Boston, etc., Association* v. *Cory*, 129 Mass. 435; LOWELL, TRANSFER OF STOCK, § 80. Statutory or charter provisions are generally found, however, which provide that stock shall be transferable only on the

books of the corporation. As to the effect of these provisions, the decisions are in conflict. One view is that they apply only to the relations between the corporation and the stockholders. Under this construction they cannot affect the question under discussion, and consequently the transferee prevails. See *Mount Holly, etc., Co.* v. *Ferree*, 17 N. J. Eq. 117. A second construction adopted by some courts gives them an effect similar to that of recording acts. This leaves out of account the consideration that the books are not open to public inspection and that hence there can be no analogy between registering a deed and recording a transfer of stock upon the books. See *Noyes* v. *Spaulding*, 27 Vt. 420. Most jurisdictions hold a third view, namely, that the legal title remains in the vendor, and that the vendee has only an equitable interest which may be extinguished by a sale to an innocent purchaser. *Otis* v. *Gardner*, 105 Ill. 436. In these jurisdictions the rights of the creditor and the transferee are often made to depend upon whether an attachment creditor is treated as a purchaser for value or as a volunteer. It would seem, however, that the general custom of business should be the determining factor. In the case of stock the *indicia* of ownership are in the person who has the certificate, not in the person in whose name the stock is registered. Banks advance money and buyers pay the price upon delivery of the certificates without registration. To require that the transfer should be registered before the vendee can have a secure title would unsettle the titles to a large part of existing stock. It cannot be too strongly urged that courts should recognize conditions as they exist in the business world, and apply legal principles that are in harmony with them, rather than build up from analogy theories which do not take into account the customs and needs of business men. It is gratifying to note that the courts in the more important commercial states favor the transferee, and that in many states where the courts have committed themselves to an opinion preferring the creditor, the transferee is now protected by statute. *Scott* v. *Pequonnock Nat. Bank*, 15 Fed. Rep. 494; *Broadway Bank* v. *McElrath*, 13 N. J. Eq. 24; *Smith* v. *American Coal Co.*, 7 Lans. (N. Y.) 317; *Finney's Appeal*, 59 Pa. St. 398; Mass. R. L. (1902), c. 109, § 37.

THE ADMINISTRATION OF DEPENDENCIES: A Study of the Evolution of the Federal Empire, with Special Reference to American Colonial Problems. By Alpheus H. Snow. New York and London: G. P. Putnam's Sons, The Knickerbocker Press. 1902. pp. vi, 619. 8vo.

The American colonial problem has now passed beyond its violently controversial stage. For good or ill this republic has undertaken the government of distant dependent peoples. The question is no longer as to the wisdom of the adoption of such a course or of the possibility of escape from it; for the burden has already been assumed. The problem now before us therefore involves primarily a search for the true principles of colonial government, and a consideration of methods and means for their proper application. Its solution will not merely require infinite patience and fortitude in practical affairs, but will perhaps even more urgently demand a thorough and vigorous understanding of the nature of our now American Empire and of the relations of its constituent States one with another, with their correlative rights and duties. Without this, ultimate success can hardly be attained. To the study of this all-important problem the present work is a timely and notable contribution.

The chief aim of the book is to establish the proposition that the American Union and the peoples and lands of its dependencies constitute a Federal Empire in which the American Union, itself a Federal State, governed in its own affairs under a written constitution, is the Imperial or Parent State, standing in a federal or contractual relation with the dependent or colonial states of the Empire and ruling them under an unwritten constitution, which in the affairs of the Empire is above the constitution and laws of the Imperial State though in the main derived from them. On this theory, the dependencies are regarded as actual states over which the Imperial State has neither unconditional nor